

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 MARICHELE S. TAHIMIC, State Bar No. 147392
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Agency Case No. **2010-442**

13 **MICHELLE LYNN LEWIS**
40953 Reden Court
14 Hemet, CA 92544-7379

A C C U S A T I O N

15 **Registered Nurse License No. RN 535099**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely
21 in her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about August 8, 1997, the Board of Registered Nursing issued
24 Registered Nurse License Number RN 535099 to Michelle Lynn Lewis (Respondent). The
25 registered nurse license was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 31, 2011, unless renewed.

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4

5
6
7
8

9
10
11
12
13

14

15

16
17

18

19

20
21
22

23

24

25
26
27

28

1 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
2 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
3 or administer to another, any controlled substance as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
5 defined in Section 4022.

6 “...

7 “(c) Be convicted of a criminal offense involving the prescription, consumption,
8 or self-administration of any of the substances described in subdivisions (a) and (b) of this
9 section, or the possession of, or falsification of a record pertaining to, the substances described in
10 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
11 thereof.

12 “....”

13 8. Section 2765 provides:

14 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
15 made to a charge substantially related to the qualifications, functions and duties of a registered
16 nurse is deemed to be a conviction within the meaning of this article....”

17 9. Section 490 of the Code provides, in pertinent part, that a board may
18 suspend or revoke a license on the ground that the licensee has been convicted of a crime
19 substantially related to the qualifications, functions, or duties of the business or profession for
20 which the license was issued.

21 10. California Code of Regulations, title 16, section 1444, states:

22 “A conviction or act shall be considered to be substantially related to the
23 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
24 present or potential unfitness of a registered nurse to practice in a manner consistent with the
25 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
26 following:

27 “...
28 “(c) Theft, dishonesty, fraud, or deceit.

1 "...."

2 11. Section 493 of the Code states:

3 "Notwithstanding any other provision of law, in a proceeding conducted by a
4 board within the department pursuant to law to deny an application for a license or to suspend or
5 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
6 the ground that the applicant or the licensee has been convicted of a crime substantially related
7 to the qualifications, functions, and duties of the licensee in question, the record of conviction of
8 the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that
9 fact, and the board may inquire into the circumstances surrounding the commission of the crime
10 in order to fix the degree of discipline or to determine if the conviction is substantially related to
11 the qualifications, functions, and duties of the licensee in question.

12 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
13 'registration.'"

14 12. Section 482 of the Code states:

15 "Each board under the provisions of this code shall develop criteria to evaluate
16 the rehabilitation of a person when:

17 "(a) Considering the denial of a license by the board under Section 480; or

18 "(b) Considering suspension or revocation of a license under Section 490.

19 "Each board shall take into account all competent evidence of rehabilitation
20 furnished by the applicant or licensee."

21 13. California Code of Regulations section 1445(b) provides the following
22 criteria for evaluating the rehabilitation of a licensee as follows:

23 "(b) When considering the suspension or revocation of a license on the grounds
24 that a registered nurse has been convicted of a crime,, the board, in evaluating the rehabilitation
25 of such person and his/her eligibility for a license will consider the following criteria:

26 "(1) Nature and severity of the act(s) or offense(s).

27 "(2) Total criminal record.

28 "(3) The time that has elapsed since commission of the act(s) or offense(s).

“(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

“(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

“(6) Evidence, if any, of rehabilitation submitted by the licensee.”

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

15. **Norco**, a brand name for hydrocodone with acetaminophen, is a dangerous drug pursuant to section 4022, and a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(J).

16. **Hydrocodone bitartrate/acetaminophen**, also known by the brand names Vicodin, Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain.

FIRST CAUSE FOR DISCIPLINE

(December 30, 2005 Criminal Conviction for Forgery and Burglary on July 6, 2005)

17. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) in that Respondent was convicted of a crime that is substantially related to her qualifications, duties and functions as a registered nurse. On or about September 20, 2005, in the Superior Court for the County of Riverside, in a case entitled *People v. Michelle Lynn Lewis* (Riverside Superior Court, Case No. SWM040927), Respondent was convicted on her plea of guilty of violating Penal Code section 470(d) (forgery/corruption of Records) and Penal Code section 459 (burglary), both misdemeanors.

1 18. Pursuant to Respondent's guilty plea on December 30, 2005, Respondent
2 was sentenced to probation for 36 months, committed to the custody of the Riverside County
3 Sheriff for 45 days, and required to make payment of fines and restitution totaling \$446.00.

4 19. Respondent violated the terms of her probation when on October 22, 2008,
5 Respondent was convicted of burglary and representing herself as one authorized to prescribe a
6 controlled substance, which is set forth in greater detail in paragraphs 20-23 below, and
7 incorporated by this reference as though set forth in full herein.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(October 22, 2008 Criminal Conviction for Burglary and**
10 **Representation as a Doctor on May 13, 2008)**

11 20. Respondent is subject to disciplinary action under Code sections 490,
12 2761(f) and 2762(c) in that Respondent was convicted of a crime involving a prescription for a
13 controlled substance, which is substantially related to her qualifications, duties and functions as a
14 registered nurse. On October 22, 2008, Respondent was convicted on her plea of guilty of
15 violating Penal Code Section 459, burglary, and of violating Health and Safety Code section
16 11173(c), unlawfully representing herself as an authorized person in order to obtain a controlled
17 substance (Norco). The circumstances that led to the conviction are as follows:

18 21. On or about May 13, 2008, Officer B. was dispatched from the Hemet
19 Police Department to the office of Dr. S.S. Dr. S.S. advised Officer B. that he had learned that
20 Respondent had previously called in three prescriptions in his name to the CVS Pharmacy in
21 Hemet, but that he had never prescribed these medications to Respondent and that Respondent
22 did not have his permission to order them. On March 20, 2008, Respondent called the CVS
23 Pharmacy posing as the wife of Dr. S.S., and ordered a prescription for 180 Norco pills. The
24 prescription was filled and Respondent picked it up. On April 18, 2008, Respondent returned to
25 the CVS Pharmacy and picked up another prescription of 180 Norco pills that she had called in
26 posing as Dr. S.S.'s wife. During these two transactions, P.V., the CVS pharmacist, was not in
27 the pharmacy and unlike P.V., the person filling the prescription was not familiar with the voice
28 of Dr. S.S.'s wife. On May 12, 2008 however, when Respondent, posing as Dr. S.S.'s wife,

1 called CVS again to fill the third prescription, P.V. was working in the pharmacy and recognized
2 that Respondent's voice was not that of Dr. S.S.'s wife. P.V. contacted Dr. S.S. to advise him of
3 the situation. The Hemet police was called and Officer B. responded, arriving at the CVS
4 Pharmacy while Respondent was at the counter. Respondent admitted she called in the fake
5 prescriptions and admitted she had an addiction to prescription medication.

6 22. Pursuant to Respondent's guilty plea on October 22, 2008, Respondent
7 was sentenced to probation for 36 months, was committed to the custody of the Riverside
8 County Sheriff for 90 days and was required to make payment of \$642.00 in fines and penalties.

9 23. Currently, Respondent is in violation of probation in that she failed to
10 appear to serve her jail sentence of 90 days. As a result, a bench warrant for Respondent's arrest
11 was issued on January 6, 2009.

12 THIRD CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct-Obtain or Possess A Controlled Substance)

14 24. Respondent is subject to disciplinary action for unprofessional conduct
15 under Code sections 2761(a) and 2762(a) in that on or about March 20, 2008 and April 18, 2008,
16 Respondent obtained controlled substances by fraud as detailed in paragraph 21 above by
17 assuming the name of Dr. S.S.'s wife in order to obtain Norco for herself. Respondent had not
18 been prescribed the medication by Dr. S.S. and did not have his permission to order it. In
19 addition, when Respondent was arrested on May 13, 2008, Respondent was in possession of
20 eight Vicodin pills for which she was not able to produce a prescription.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct-Obtain or Possess A Controlled Substance)

23 25. Respondent is subject to disciplinary action for unprofessional conduct
24 under Code sections 2761(a) and 2762(a) for obtaining controlled substances by fraud in that on
25 November 29, 2007, December 18, 2007, December 31, 2007, January 31, 2008, February 13,
26 2008 and February 28, 2008, prescriptions for Respondent were called in using Dr. K.F.'s and
27 S.H.'s Drug Enforcement Agency number. These prescriptions were not authorized by Dr. K.F.
28 or by S.H. and occurred after Respondent was discharged from the care of Dr. K.F.

1 26. Respondent was a patient of Dr. K.F. from June 4, 2007 until November
2 21, 2007, when Dr. K.F. discharged her from his care because Respondent did not tell the truth
3 about receiving pain medication from another physician. Starting on November 29, 2007,
4 Respondent filled six prescriptions for hydrocodone; five of the prescriptions were for 120 pills
5 each and the last prescription was for 180 pills. All of these prescriptions were left on the Wal-
6 Mart Pharmacy answering machine and allegedly called in by "Nikki" or "Mikki" of Dr. K. F.'s
7 office. "Nikki" or "Mikki" did not call in any prescriptions for Respondent after she was
8 discharged from Dr. K.F.'s care on November 21, 2007.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Obtain or Possess A Controlled Substance)**

11 27. Respondent is subject to disciplinary action for unprofessional conduct
12 under sections 2761(a) and 2762(a) in that between March 12, 2008 and May 15, 2008,
13 Respondent filled unauthorized prescriptions for hydrocodone using the name of Dr. K.S. and
14 Dr. S.S.

15 28. Respondent was a patient of the medical group to which Dr. K.S and Dr.
16 S.S. belong until February 20, 2008, the date of Respondent's last visit to Dr. K.S. During this
17 visit, Respondent complained of a fall and injury to the tail bone and complained of pain. Dr.
18 K.S. wrote a prescription for Vicodin, without refills, and called in the prescription to a Rite-Aid
19 Pharmacy on February 20, 2008. That prescription was filled on that date.

20 29. On March 12, March 27, April 28, May 5, May 11 and May 15, 2008,
21 Respondent filled prescriptions for hydrocodone allegedly issued by Dr. K.S. or Dr. S.S. None
22 of these prescriptions were actually authorized by Dr. K.S. or Dr. S.S.

23 **PRAAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein
25 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

26 1. Revoking or suspending Registered Nurse License Number RN 535099,
27 issued to Michelle Lynn Lewis;

28 ///

1 2. Ordering Michelle Lynn Lewis to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: 3/17/10

6
7 *Louise R. Bailey*
8 LOUISE R. BAILEY, M.Ed., RN
9 Interim Executive Officer
10 Board of Registered Nursing
11 Department of Consumer Affairs
12 State of California
13 Complainant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28